

**DECISION**



**THE COMPTROLLER GENERAL  
OF THE UNITED STATES**  
WASHINGTON, D.C. 20548

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**FILE:** B-217122; B-217126 **DATE:** February 21, 1985  
**MATTER OF:** Y. T. Huang & Associates, Inc.

**DIGEST:**

1. GAO's review of agency selection of an architect-engineer (A-E) contractor is limited to examining whether the selection is reasonable. It is not GAO's function to determine the relative merit of the submissions of A-E firms. We will question the agency's judgment only if it is shown to be arbitrary.
2. GAO will not review a determination whether to contract under section 8(a) of the Small Business Act unless the protester presents prima facie evidence of fraud or bad faith on the part of procurement officials.

Y. T. Huang & Associates, Inc. (Huang), protests the selection of Roof Engineering Inc. (REI), by the General Services Administration (GSA) as the firm with which to negotiate architect-engineer (A-E) contracts Nos. GS-07B-31429 and GS-07B-31434. These contracts are for design and preparation of bidding documents to replace the roof of warehouse No. 5 and to replace the roof and renovate section "C" of warehouse No. 1 in Fort Worth, Texas.

We deny the protest.

Huang protests that it has greater experience and expertise to perform on the projects and that GSA's selection of REI was procedurally defective and prejudiced.

The GSA report has responded to several of Huang's factual allegations and, since Huang did not pursue these allegations further in its comments, we assume that GSA's responses were satisfactory to Huang.

Therefore, Huang's protest is now based on three arguments--that the Slate Selection and Screening Board for both contracts improperly evaluated its experience and

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capability; that as a minority firm, it should receive an award; and that, in any event, REI should not be allowed to receive both awards.

GSA announced its intention to contract for these A-E services in the Commerce Business Daily and invited all interested qualified firms to submit standard forms 254 and 255 outlining their qualifications for the project. The two Commerce Business Daily notices described the projects and, with regard to qualifications and evaluation of possible contractors, both notices stated the following selection criteria:

"Key personnel (40%) - Their time commitment to this project, their qualifications and experience on similar projects. Design management (25%) - scheduling and cost control methods, production facilities, capabilities and techniques."

"Experience (35%) - Past performance on similar projects including budgeted cost and actual cost."

The Director of GSA's Construction and Design Division appointed two separate three-member Slate Selection and Screening Boards for the projects.

Huang states that even though the requests for proposals (RFP) used identical selection criteria, the screening boards rated it second on warehouse No. 1, but sixth on warehouse No. 5, which Huang alleges is proof of inconsistent and arbitrary decision making. Huang also alleges that the subsequently convened A-E evaluation boards subjectively and arbitrarily scored Huang lower than REI on team longevity, productive capability and possibility of change orders. In this regard, Huang notes that it has been in business since 1970 and REI was established in 1976. Huang also takes issue with its scores on key personnel, production facilities and ability to handle both contracts.

Our review of the agency selection of an A-E contractor is limited to examining whether that selection is reasonable. We will question the agency's judgment only if it is shown to be arbitrary. Leyendecker & Cavazos, B-194762, Sept. 24, 1979, 79-2 C.P.D. ¶ 217. In this regard, the protester bears the burden of affirmatively proving its case. ACMAT Corporation, B-197589, Mar. 18, 1981, 81-1 C.P.D. ¶ 206.

We note initially that the mere fact that Huang has been in business 6 years longer than REI does not mean that it automatically has greater experience within the meaning of the selection criteria of the RFP. GSA points out that REI has been performing well on all aspects of roofing projects for GSA for 5 years. The fact that REI had a good performance record on roofing projects would certainly have an impact on its higher scores in areas of key personnel and experience, which accounted for 40 percent and 35 percent, respectively, of the evaluation score. We find that the selection and screening boards and the evaluation boards had a reasonable basis for scoring REI higher than Huang.

With regard to the fact that Huang did not receive identical scores from the two Slate Selection and Screening Boards, we note that the boards were not made up of identical personnel. Moreover, the two boards were performing their function on different contracts and, although the evaluation criteria for both contracts were identical, we would not expect the boards to reach identical results in their scoring of the same offeror on different contracts. Additionally, the Slate Selection and Screening Board's dissimilar scoring of Huang was, in any event, not prejudicial since the evaluation boards for both solicitations did not rank Huang among the top three firms on either contract.

Further, it is not the function of our Office to make our own determination of the relative merits of the submissions of A-E firms. The procuring officials enjoy a reasonable degree of discretion in evaluating such submissions and we will not substitute our judgment for that of the procuring agency by making an independent examination. R. Christopher Goodwin & Associates and GeoScience Inc., B-206520, Nov. 5, 1982, 82-2 C.P.D. ¶ 410.

Huang also argues that it should receive an award since it is a minority firm, while REI is not. GSA states that these two solicitations were not set aside for the Small Business Administration's program under section 8(a) of the Small Business Act, 15 U.S.C. § 637(a)(1) (1982). Therefore, Huang was not entitled to any preference as a minority firm. Further, even if this issue had been timely protested before the closing date, GAO will not review a determination whether to contract under section 8(a), or the judgmental decisions involved, unless the protester presents prima facie evidence of fraud or bad faith on the part of procurement officials. Such evidence must include a showing that the agency had a specific intent to injure the protester. Building Services Unlimited, Inc., B-213569, Feb. 6, 1984, 84-1 C.P.D. ¶ 148. No such showing is made here.

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Finally, Huang argues that both of the awards should not have been made to the same firm. There is, however, no requirement that the two separate solicitations be awarded to separate contractors. See Dhillon Engineers, Inc., B-209687, Mar. 16, 1983, 83-1 C.P.D. ¶ 268.

In view of the above, Huang's protests are denied.

*for Seymour E. Fine*  
Comptroller General  
of the United States